



Unmarried Families

Despite general public perception, there is no such thing as a 'common law spouse'. If you live together with your partner but are not married/formed a civil partnership then your rights and obligations relating to property, children and maintenance are very different compared to couples who have undertaken a formal ceremony. This can often lead to situations, which, in the general sense, seem very unfair.

The law as it currently stands, often leads to perceived injustices for such cohabiting couples when they subsequently separate, or should their partner die, compared with the rights afforded to a spouse or a civil partner. Instead, disputes arising between cohabitants involve complex and often strict property/trust law issues which often results in significant legal costs and is inadequate when dealing with the dynamics of a separating couple. For instance, the Court has to look at factors such as the common intention of the parties and their contributions. Unfortunately a cohabitant who contributes to the home by looking after the children of the relationship is unable to be able to claim an interest in the family home for this reason alone if it is registered in his/her partner's sole name and in the absence of the owning cohabitant telling the other that half the home belongs to them. This is not the case where the couple are married or are civil partners, when a Judge has a wide discretion, and is able to take into account the fairness and reasonableness of the couple's situation when deciding on an appropriate financial settlement. The law affecting co-habitees is thus a highly complicated area and it is important that you seek legal advice when contemplating moving in with your partner and certainly as soon as difficulties arise.

The law relating to children is also different for co-habitees. A mother always has Parental Responsibility (see Glossary) for a child but this is not true for fathers. A father, who is not married to the mother of his child, has very different rights from his married counterparts. Unmarried fathers do not automatically receive parental responsibility and it can only be obtained in one of the following ways:

- If the birth is registered after 1 December 2003, by the father signing the birth register;
- The father entering into a parental responsibility agreement with the mother of the child;
- The father applying to Court for a Parental Responsibility Order; and
- The father marrying the mother of the child.

If a father does not have parental responsibility, only the mother will have the right to decide where the child shall be educated, consent to medical treatment or appoint a guardian. This does not mean that the natural father is devoid of rights because he can still apply to the Court as a parent if he is unhappy about any aspect of the child's upbringing (see Children Act Proceedings Fact Sheet). Nevertheless it is still advisable to acquire Parental Responsibility as soon as possible.

A natural father will remain obligated to pay child maintenance and will remain eligible for assessment by the Child Support Agency (known as the CSA), whether or not they have parental responsibility.

The same cannot be said in respect of monthly financial support for a co-habitee. Unlike married couples and civil partners, there are no legal provisions obligating someone to pay maintenance to their co-habitee if they go their separate ways. Further, cohabitees are not each other's next of kin under the intestacy rules (the rules applied to your property on your death) so the making of a will is crucial to avoid a situation where your cohabitee is not provided for accordingly. The law is now under review by The Law Commission, where the potential financial hardship suffered by cohabitants or their children upon separation or death is being considered. It is very much hoped that there will be reform in the near future which will provide a range of remedies for cohabiting couples upon separation, enabling the courts to consider orders such as lump sum payments, transfers of properties, pension orders and possibly even maintenance. In the meantime, Cohabitation Agreements are becoming more popular with couples in order to address financial issues. Although there are no guarantees that a Cohabitation Agreement will be binding should the parties later separate, if certain safeguards are followed such as both parties taking independent legal advice and providing full details of their respective financial positions, it should carry more weight should it have to be relied upon. Some may view such a document as depressingly unromantic, but it is a sensible approach to take as it will highlight those areas that need to be addressed to protect one another as much as possible and detail each party's intentions and expectations, at a time when they are not in conflict.

Whilst we await reform of the law, the preparation of a Cohabitation Agreement may prove for some to be a wise and sensible course of action.

Should you require any further information on this area or have any queries please do let us know so that we can discuss them with you.

If you have any queries whatsoever, please do feel free to contact us:
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